Document:-
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Summary record of the 168th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
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34. Mr. SCELLE said that while he had not been guilty of confusing the territorial sea with the contiguous zone, he nevertheless felt that the difference was only one of words. It perhaps consisted merely in States claiming 90 per cent sovereignty over the territorial sea, and only 50 per cent of sovereignty over the contiguous zone, and 20 per cent sovereignty over the continental shelf.

35. Mr. François had suggested that the breadth of the territorial sea be delimited at six or twelve miles. Indeed there was no reason why it should not be twenty-four miles. Since stress had been laid by certain members on the necessity of acceptance by governments, he might argue that by the time some kind of international agreement were reached on the subject, a twenty-four-mile rule would have a better chance of acceptance.

36. Mr. LAUTERPACHT said that, as he understood it, Mr. François had proposed, first, that the Commission should ascertain whether or not the three-mile limit had ceased to be a rule of international law and, second, that the Commission should declare that States were not entitled to extend their territorial sea beyond either six or twelve nautical miles. The first problem was of course of great legal interest and he suggested that the Commission treat it separately from the second.

37. Mr. CÓRDOVA considered that the Commission was more or less agreed that no three-mile rule existed in international law ; there was, however, another issue to be decided, namely, whether the Commission should propose a limit for the territorial sea. He, himself, and probably Mr. Scelle too, would reply in the negative. The Commission would then discuss whether or not to recommend a six-mile limit, and the calling of a diplomatic conference in the matter.

38. Mr. KOZHEVNIKOV said that, although the Chairman seemed to assume that Mr. François' proposals were to be taken as the basis for further discussion, a formal decision on the part of the Commission was necessary.

39. Mr. HSU considered that there was no need for the Commission to take up time in discussing whether or not to recommend a six or twelve-mile limit. The way in which the issue had been expressed by Mr. François was preferable.

40. Mr. CÓRDOVA said he had understood Mr. François to argue that the Commission should declare itself in favour of adopting a six-mile limit, but Mr. François had not explained in his report any juridical reason for that rule. Furthermore, countries with a six or twelve-mile limit were definitely in a minority.

The meeting rose at 11.40 a.m.

168th MEETING

Monday, 21 July 1952, at 2.45 p.m.

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Chairman : Mr. Ricardo J. ALFARO.

Rapporteur : Mr. Jean SPIROPOULOS.

Present :

Members : Mr. Gilberto AMADO, Mr. Roberto CÓRDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. H. LAUTERPACHT, Mr. Georges SCELLE, Mr. J. M. YEPES, Mr. J. ZOUREK.

Secretariat : Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

Date and place of the fifth session (item 7 of the agenda) (*resumed from the 150th meeting*) [1]

1. The CHAIRMAN said that he had received the following communication from Mr. Kozhevnikov :

" Dear Mr. Chairman,

" Now that I have looked more closely into the question of where the next session of the Commission should be held, I find that I too am disposed to vote in favour of Geneva.

" I should therefore be glad if you would arrange for this statement to be included in the summary record.

" I have the honour to be etc.

(*Sgd.*) F. I. Kozhevnikov."

2. Mr. el-KHOURI recalled that he too had abstained from the vote at the 150th meeting. As it now appeared that all other members of the Commission were in favour of holding the next session in Geneva, he would rally to their unanimous decision.

3. Mr. ZOUREK said that, as the last of those who had abstained from the vote at the 150th meeting, he too wished, on reflection, to vote in favour of the fifth session of the International Law Commission being held in Geneva.

4. Mr. CÓRDOVA said that he wished to place on record that, if he had been present on the occasion of the vote on the place of the next session, he also would have voted in favour of Geneva.

[1] See summary record of the 150th meeting, para. 90.

Régime of the territorial sea (item 5 of the agenda) (A/CN.4/53) (*continued*)

ARTICLE 4 : BREADTH (*continued*)

5. The CHAIRMAN invited the Commission to continue its consideration of the Draft Regulation in the special rapporteur's report (A/CN.4/53) on the régime of the territorial sea. The proposal put forward by Mr. François at the previous meeting [2] had now been submitted in written form : it read as follows :

> " 1. The Commission recognizes that existing international law does not require the breadth of the territorial sea to be limited to three miles ;
>
> " 2. The Commission declares that existing international law does not permit the extension of the territorial sea beyond six [or twelve] miles ;
>
> " 3. The Commission suggests that a diplomatic conference be convened for the purpose of determining, by convention, the limits of the territorial sea."

6. Mr. CÓRDOVA thought the Commission was in agreement that no State could fix the breadth of its territorial sea by unilateral action, but that was not the same thing as suggesting that existing inernational law did not permit extension beyond a certain figure. No such suggestion had in fact been made, either during the course of the debate or by the special rapporteur himself in his report. Moreover, there appeared to be some contradiction between paragraphs 2 and 3 of Mr. François' proposal. If the limit was already fixed by international law, there seemed to be no point in holding a diplomatic conference to fix it by convention.

7. Mr. FRANÇOIS thought it was beyond doubt that the law of nations had always set, and still set, limits for the territorial sea. For a long time those limits had been set at three miles. What they were at the present time might be open to question ; indeed, that was the question the Commission was discussing. He fully agreed with Mr. Spiropoulos that if a State claimed to exercise sovereignty over a belt of sea 20 to 30 kilometres from its coasts, and a dispute arising from that claim came before the International Court of Justice, the Court would have no hesitation in stating that such a claim was contrary to existing international law.

8. He saw no contradiction between paragraphs 2 and 3 of his proposal. In paragraph 2 the Commission merely stated the maximum breadth of the territorial sea under existing international law. That was no reason why a diplomatic conference should not be convened to seek to reach agreement on a single maximum figure, which might be either more or less than what existing international law permitted.

9. Mr. LAUTERPACHT asked what, in Mr. Córdova's view, was the practical difference between saying that existing international law prescribed no limit to the breadth of the territorial sea and saying that States were entitled to determine its breadth as they chose.

10. Mr. CÓRDOVA replied that, in his view, it was clear that States could not be permitted to determine the breadth of their territorial sea by unilateral action, since that would lead to anarchy. On the other hand the only juridical basis for fixing the limit of the territorial sea at a definite figure, that of cannon range, was obsolete. The limit could therefore only be fixed by political means.

11. Mr. LAUTERPACHT observed that, in other words, Mr. Córdova would not at present be able to say whether a State which unilaterally set the limits of its territorial sea at 20 miles was acting contrary to international law. That was perhaps rather negative, but Mr. Córdova's reply had at least been of value in clarifying his views.

12. The proposal which had now been submitted by Mr. François considerably enlarged the scope of the discussion. If it were adopted, the International Law Commission would be taking perhaps the most important decision it had ever taken in the course of its existence, for the issue involved was not confined to the particular matter of the breadth of the territorial sea ; it affected the general powers and functions of the Commission, and the manner in which international law should evolve.

13. Mr. François suggested that the Commission should state that the historic three-mile rule was no longer part of international law. Mr. Yepes had gone further and asserted that the three-mile rule had never been generally observed and was now recognized only by a minority of States ; in that connexion he had claimed that the United of America was no longer in reality a proponent of that rule. The attitude of one of the two greatest maritime powers in the world was clearly a matter of such interest that he (Mr. Lauterpacht) felt it desirable to examine Mr. Yepes' claim rather more closely.

14. In a note to the Government of El Salvador, written as recently as 12 December 1950, the United States Government had stated :

> " The United States of America has, in common with the great majority of other maritime nations, long adhered to the principle that the belt of territorial waters extends three marine miles from the coasts. My Government desires to inform the Government of El Salvador, accordingly, that it will not consider its nationals or vessels or aircraft as being subject to the provisions of Article 7 [of the Constitution of El Salvador of 1950] or to any measures designed to carry it into execution." [3]

Similar statements had been made by the United States Government in notes addressed in recent years to the Governments of Argentina, Chile and Peru.[4] It was moreover at the insistence of the United States Government that a provision declaring that it was the firm

[2] *Ibid.*, 167th meeting, para. 20.

[3] Reproduced in *Laws and Regulations on the Régime of the High Seas*, United Nations Publication, Sales No. : 1951. V. 2., vol. 1, p. 301.

[4] *Ibid.*, pp. 5, 7 and 17 respectively.

intention of the Parties to uphold the three-mile rule had been included in various of the treaties concluded between the United States and other governments for combating the smuggling of alcoholic liquors. Both traditionally and in fact the United States was one of the most stalwart supporters of the three-mile rule. The occasional claims of the United States, merely enforced and not recognized by other States, to the exercise of some jurisdictional rights for custom and similar purposes, could not properly be advanced as implying the abandonment of the historic attitude of the United States in the matter.

15. Canada and Venezuela, to take only two examples, were other countries traditionally wedded to that rule. Yet the special rapporteur had not included them in the list of countries applying the three-mile limit, on the ground, apparently, that for some purposes they claimed contiguous zones.

16. The origin of the four-mile limit applied by the Scandinavian countries lay largely in differing methods of computation. The Scandinavian States had not advocated a wide limit of territorial waters. Thus, in a note addressed by Sweden to the Soviet Union in 1950 and again in 1951 concerning the latter's claim to a twelve-mile limit in the Baltic, the Swedish Government had stated :

> " While it is true that Sweden has never maintained that there are uniform rules governing the limit of territorial waters, there can be no doubt that European States have assigned fixed limits, dating from some centuries ago, to their territorial waters. In the case of the Baltic States these limits extended to three, and in certain cases, to four sea miles. In this way a legal code has been established whereby the sea beyond these territorial limits must be regarded as open sea, concerning which it cannot, under international law, be the subject of occupation. Any extension of territorial waters, therefore, in the view of the Swedish Government, amounts to an appropriation of the open sea, where the nationals of every State enjoy fishing and sailing rights without interference by other States." [5]

Similar statements had appeared in recent diplomatic notes sent to Iceland on behalf of the Belgian, Netherlands and French Governments.

17. Various members of the Commission had also contended that authorities on international law were in general agreement that the three-mile rule had ceased to exist. He did not think that a careful reading of the authorities bore out that contention. The view of many writers appeared to be not that the rule had ceased to exist, but that it had become, in the words used by Westlake, " quite obsolete and inadequate ". The special rapporteur had expressed the view that it had lost its scientific basis ; he had not expressed the view that it had lost its legal basis.

18. Much had been made of Gidel's writings on the subject. He (Mr. Lauterpacht) in turn would draw attention to a passage from that author's lectures at the *Académie de droit international* in which he had stated :

> " *Elle* [the claim to a wider limit] *n'a de valeur internationale que par l'assentiment individuel de chaque État et pour cet État seulement* ".[6]

19. He recalled that in his extremely interesting intervention, the Secretary had at the previous meeting questioned the theory that the three-mile rule had died with the 1930 Conference for the Codification of International Law. Mr. Spiropoulos had suggested that that rule had not ceased to exist at the time of the 1930 Conference, but that it had ceased to exist at some later stage. It would be interesting to know precisely when Mr. Spiropoulos thought it had ceased to exist.

20. In 1933 El Salvador and, as recently as 1941, Chile had acknowledged the three or four-mile rule. Several years later those countries had advanced claims which met with protest, on the subject. No legal significance could be attached to that sudden change. In his view, the Commission must have far more justification than it appeared to have at present before it could pronounce the demise of an historic rule which was still supported not only by some of the greatest maritime powers in the world but by many others as well. As he had already indicated, the question was of the utmost importance ; it was nothing less than whether international law was to be changed by an orderly process or by the unilateral action of States.

21. In his view, the Commission should in due course state that the relevant rule of international law, which was still in effect, was the three-mile rule ; but that international law permitted the extension of the territorial sea beyond three miles in certain cases where geographical or historial considerations militated in favour of such expansion or where the acquiescence of the other interested States was obtained. In that connexion the special rapporteur might usefully study how far the six-mile limit had become a rule of customary law for those States which had raised no objections to it. It was possible that, after thorough consideration, the Commission might decide to recommend that the limit be increased. Such a mechanical solution might be receptive. For that reason the Commission might indicate other means such as the increased use of contiguous zones, or certain rights of protection not amounting to the exclusion of foreign interests, of natural resources of the sea by the coastal States in the belt of sea adjoining their coasts.

22. Mr. LIANG (Secretary to the Commission) recalled that he had suggested that in order to capture the attention of governments and the scientific public, the Commission should accompany any specific recommendation it made with an exhaustive commentary conforming with the provisions of article 20 of its Statute. Adoption of paragraphs 1 and 2 of

[5] Quoted by Professor C. H. M. Waldock in *British Year Book of Intenational Law*, vol. 28 (1951), p. 127.

[6] *Recueil des cours de l'académie de droit international*, 1934, vol. II, p. 180.

Mr. François' proposal without such a commentary might appear unwise. Moreover, it seemed realistic to suppose that if the Commission committed itself to the statements of principle contained in those two paragraphs, governments which still supported the three-mile rule would be reluctant to attend the diplomatic conference which Mr. François suggested in paragraph 3.

23. He wondered, therefore, whether the Commission should not either confine itself to suggesting that a diplomatic conference be convened, without pre-judging the questions that conference would have to consider, or, alternatively, study the whole question further with a view to making a specific recommendation, supported by an exhaustive commentary, which could serve as a basis for discussion for the General Assembly or for a diplomatic conference.

24. Mr. HSU said that there could be no doubt that the three-mile limit had been proved inadequate. Some States had already extended the limit to twelve miles ; others were in the process of doing so ; others still had found other means of achieving the same end while still formally proclaiming their adrerence to the three-mile rule. In his view the Commission should not defer a decision on the question any longer. It should either recommend a twelve-mile limit, or if that was impossible, recommend that a diplomatic conference be convened for the purpose of determining the limit by convention.

25. Mr. SPIROPOULOS thought that Mr. Córdova had not explained away satisfactorily the contradiction evident in his contention that States were not free to extend the breadth of their territorial sea as they chose, but that there was no limit imposed by international law. In his (Mr. Spiropoulos') view, States had the power to determine the breadth of their territorial sea, but only within certain limits.

26. He agreed with Mr. Lauterpacht that over many years there had been general agreement that the three-mile limit existed. It was the Commission's task, however, to codify existing law, and to do so it must take into account the developments which had indisputably occurred.

27. He was sceptical about the outcome of a diplomatic conference for the purpose of determining a new limit. There was a fundamental divergence of view, and no solution could secure an overwhelming majority. In those circumstances, a convention would not improve the present situation and might even encourage extravagant claims for the extension of the territorial sea.

28. Mr. FRANÇOIS recalled, in reply to Mr. Lauterpacht, that he had listed as States applying the three-mile limit only those which applied it " either alone or in combination merely with a contiguous zone for customs, fiscal or sanitary control (the only contiguous zone which the International Law Commission declared its readiness to accept)". Canada claimed twelve miles of contiguous zone for fishing purposes, and Venezuela twelve miles of contiguous zone for security and protection of interests. That was why he had not included them.

29. The Secretary had suggested that it confine itself to recommending that a diplomatic conference be convened. He wondered whether in that way the Commission would be fulfilling its task, which was to indicate existing law.

30. Mr. LIANG (Secretary to the Commission) said that in his view the best course would be to submit a specific recommendation with an exhaustive commentary at a later stage. But if the Commission wished to adopt Mr. François' proposal, he thought it should not commit itself to bare statements of principle such as those contained in paragraphs 1 and 2.

31. Mr. HUDSON agreed that, in six of the sixteen treaties concluded between the United States of America and other States for combating the smuggling of alcoholic liquors, the High Contracting Parties had declared their firm intention to uphold the three-mile rule, though it must be noted that they had not stated that that rule was a principle of international law. In the remaining ten treaties, however, those with Belgium, Chile, Denmark, France, Greece, Italy, Norway, Poland, Spain and Sweden, no such statement had been made. On the contrary, the provision to which Mr. Lauterpacht had referred had been replaced by the following:

> "The High Contracting Parties respectively retain their rights and claims, without prejudice by reason of this agreement, with respect to the extent of their territorial jurisdiction."

He thought it would be useful if, in the commentary which he would prepare for his next report on the subject, the special rapporteur would indicate the dates of the relevant legislation in the various countries. A number of States had enacted legislation concerning the breadth of their territorial sea since 1930; so far as he knew, none of them had adhered to the three-mile limit.

32. Under paragraph 3 of Mr. François' proposal, the sole purpose of the diplomatic conference would be to determine the limits of the territorial sea. He wondered whether the special rapporteur would not agree that the question of the breadth of the territorial sea could not be considered in isolation. At the 1930 Conference for the Codification of International Law, it had been considered in conjunction with that of contiguous zones. Since 1930 a number of States had established non-contiguous as well as contiguous zones. In his view the terms of reference of any conference convened to determine the maximum breadth of the territorial sea should include the questions of all off-shore zones, whether contiguous or not, and also that of the base-line, with regard to which the judgment of the International Court of Justice in the Norwegian Fisheries dispute had provided a number of useful pointers.

33. Mr. KOZHEVNIKOV said that the Commission, in which such sharp differences of opinion had arisen on the fundamental issues associated with the delimitation of territorial waters, should address itself

to three problems. First, had there existed in the past a generally accepted rule on the extent of territorial waters? Secondly, if so, was it still valid, and, thirdly, was there a basis at present for establishing such a rule *de lege ferenda*?

34. The answer to the first question was in the negative, despite the attempt of certain members, adducing purely adventitious arguments, to claim the existence of a three-mile rule. The practice of the United Kingdom Government and the efforts of English legal authorities had not met with success and both theoretical and practical objections to that rule were to be found in the works of Russian jurists and the policy of the Soviet Union Government.

35. Objective examination of the second question would also lead to a negative conclusion, since no generally accepted rule delimiting territorial waters was to be found either in an international convention, in custom or in the municipal law of any country. The indisputable principle that the breadth of territorial waters was a matter for determination exclusively by coastal States was recognized both in international practice and national legislation.

36. As for the third question, he was extremely doubtful whether it would be possible to establish a rule *de lege ferenda* in view of the sovereign rights of States in the matter. He could not, however, agree that, if that were so, States would necessarily resort to arbitrary action.

37. Mr. François' proposal that the Commission recommend the calling of a diplomatic conference for determining by convention the limits of territorial waters was at first sight attractive, but was hardly likely to achieve results in view of the failure of the Conference for the Codification of International Law of 1930 and in the face of the fundamental principle that sovereignty was the basis of international law.

38. In order to correct the one-sided picture given by Mr. Lauterpacht when referring to the exchange of notes between the Soviet Union and Sweden in 1951, he would draw the attention of the Commission to the fact that the Soviet Government in its note had stated that the Swedish Government must be aware that no general rules establishing the breadth of territorial waters existed and that their delimitation fell within the exclusive competence of the coastal State.

39. Mr. CÓRDOVA said that, following Mr. Lauterpacht's remarks, he must again draw the Commission's attention to the view, with which he entirely agreed, expressed by Gidel that the so-called three-mile rule, which had never been a positive rule of international law, was rejected by the 1930 Conference for the Codification of International Law and had not been replaced by any other.

40. It was regrettable that so much weight should be given to the views of major maritime Powers which attempted to create rules of international law and to repudiate them when they no longer suited their purpose. It was clearly in deference to the fact that several major Powers, including the United States, had signed treaties declaring their intention to uphold a three-mile limit that Mr. Schücking had modified his original proposal for a six-mile limit, submitted to The Hague Conference.

41. Riesenfeld had argued in his book *The Protection of Coastal Fisheries under International Law*[7] that the policy of the United Kingdom Government had undergone a change and that it had become increasingly interested in seeing that the territorial sea of other States was kept as narrow as possible. A similar argument had been developed by Pearce Higgins and Colombos.

42. Mr. Lauterpacht had emphatically declared his belief that the three-mile rule still existed, yet he had admitted in his seventh edition of Oppenheim that: "Technical developments in sea transport and communications, in the range of guns, and other changes have not been altogether without effect upon the three-miles rule".[8]

43. He (Mr. Córdova) could not associate himself with the view of Mr. Spiropoulos that the Commission should not recommend a diplomatic conference because it was bound to fail. Such a consideration should not prevent the Commission from making a definite proposal as to what the limit of the territorial sea should be.

44. Referring to the method of classifying States according to the territorial sea to which they laid claim, he said it would have to be based on a definition of the rights exercised over the belt. It would then be possible to establish what was the most common practice. It would be most useful if the special rapporteur thought fit to include such an analysis in his next report.

45. Mr. AMADO, in the light of the Commission's discussions, moved that Mr. François' proposal be replaced by the following:

"1. The Commission recognizes that, as regards the limitation of the territorial sea to three miles, international practice is not uniform.

"2. The Commission considers that extension of the territorial sea beyond twelve miles is not authorized by international practice.

"3. In view of the lack of uniformity in international practice the Commission has been unable to propose a general formula for recommendation."

He had no definite opinion to express at the present stage on the third point in Mr. François' proposal.

46. Mr. YEPES said that, despite Mr. Lauterpacht's brilliant efforts to prove the contrary, the conclusion to be drawn from the Commission's discussions was that the three-mile limit was not a general rule of international law. Mr. Lauterpacht had not succeeded in demonstrating why States which represented only 25 per cent of the population of the world should impose such a rule upon others.

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[7] (Washington, Carnegie Endowment, 1942).

[8] *International Law: A Treatise, 7th ed.* (London, Longmans, Green and Co., 1948), vol. I, p. 445.

47. He could accept point 1 of Mr. François' proposal provided it were re-cast in an affirmative form to read:

> "The Commission declares that general international law in force no longer recognizes as a generally accepted legal principle the rule that the extent of the territorial sea must be limited to three miles."

48. He could not support point 2, unless the special rapporteur succeeded in convincing him that there was a rule of international law which would enable the Commission to declare that the territorial sea should not be extended beyond six or twelve miles. In his view, such a declaration was entirely arbitrary and had no scientific basis whatsoever.

49. He opposed point 3 on the grounds that it would convey an extremely bad impression for a body of experts to propose the holding of a diplomatic conference for purposes of deciding strictly legal questions. Such a recommendation, he believed, would not be well received by the General Assembly. He would only be in favour of a diplomatic conference if the Commission were in a position to submit to it a carefully elaborated draft on the territorial sea and all related questions.

50. Finally, he expressed his disagreement with the view of certain members that there was no limitation on the right of States to determine the breadth of their territorial sea. Such unconditional sovereignty would be contrary to common sense, to the interests of other States and to those of the community as a whole, and would therefore constitute an abuse of law. In his view there was no doubt whatsoever that custom, defining the breadth of the territorial sea, prescribed limits on the right of States to determine it.

51. Mr. ZOUREK said the Commission should have confined itself to considering the question raised by the special rapporteur in his introductory statement on his report, namely, whether there was any positive rule of international law delimiting territorial waters and, if not, whether one could be established *de lege ferenda,* but as the discussion had gone somewhat further, he felt bound to comment on Mr. François' proposal.

52. To begin with point 2 of that proposal, no concrete argument had been adduced to substantiate such a thesis. He knew of no principle prohibiting extension of the territorial sea beyond a certain limit. No general treaty existed on the matter and the practice of States varied considerably. The only real defence advanced had been that of the freedom of the seas, but the defence was a weak one since that principle related to the régime of the high seas and had no connexion with the breadth of territorial waters, a matter which States were free to determine in accordance with their interests. There was no rule of international law which prevented them from doing so.

53. He was extremely sceptical of the utility of convening a diplomatic conference at the present time, as suggested in point 3 of Mr. François' proposal. At all events, it was premature to make such a recommendation, until the Commission was in a position to prepare a complete draft on territorial waters and the related issues.

54. Mr. SCELLE agreed with Mr. Hudson that it would be impossible to isolate and deal separately with the problem of delimiting the territorial sea. He himself went further in thinking that, if the problem of contiguous zones could be settled, the rest would be easy.

55. Article 38, paragraph 1, sub-paragraph (*b*) of the Statute of the International Court of Justice stated that the Court should apply "international custom, as evidence of a general practice accepted as law". In his view, there was no general practice on delimiting the territorial sea and, even if there had been, it would not have constituted a rule of international law unless recognized as such by jurists. Few would deny that legal opinion had weight in such matters. Accordingly, he would support point 1 in Mr. François' proposal and oppose point 2.

56. The Conference for the Codification of International Law, which had met at a time when the international community was far less divided than it was at present, had achieved nothing. If a diplomatic conference were to be convened now, it would fail lamentably and its failure would be dangerous. It was not for the Commission to recommend a course of action that was bound to end in a fiasco.

57. Mr. el-KHOURI thought point 1 ought to have been expressed more affirmatively to read: "The Commission notes that existing international law universally recognizes a width not less than three miles for the territorial sea of coastal States".

58. Nor could he agree with point 2, as presented by the special rapporteur, since it suggested that there was a rule prohibiting the extension of the territorial sea beyond a certain limit. No such rule existed, though it was acknowledged that States were not free to extend their territorial sea at will. It was, however, open to the Commission to propose a limit and in his view it should be 20 kilometres which was practically equivalent to 12 miles. He was accordingly in favour of point 2 being redrafted in that sense.

59. As to point 3, he could not agree that it was for the Commission at the present stage to recommend the convening of a diplomatic conference. It should rather submit its proposal for limiting the territorial sea to 20 kilometres to the General Assembly. That organ could then decide whether or not a conference should be convened on the matter.

60. Mr. FRANÇOIS, referring to Mr. Hudson's question as to whether a diplomatic conference should not dealt with other matters in addition to the breadth of the territorial sea, said he agreed that it should but that he could not make a proposal to that effect until those other matters, such as the baseline, had been discussed. It should be remembered that his proposal was very tentative since their examination of his report was only in its preliminary stages.

61. He would be interested to see Mr. Amado's text in writing and would confine himself at the present stage

to suggesting that it was impossible to speak of international practice as authorizing the extension of the territorial sea. Surely only the law could authorize.

62. He had already answered the question asked by both Mr. Yepes and Mr. Zourek as to what principle prohibited the extension of the territorial sea. The principle was of course the freedom of the seas. He must contest Mr. Zourek's argument that States were the sole judge in the matter. The three-mile limit had been observed for centuries and accepted as a rule of law.

63. Mr. CÓRDOVA asked whether the special rapporteur considered that the principle of the freedom of the seas authorized the delimitation of the territorial sea at six or twelve miles.

64. Mr. FRANÇOIS replied in the affirmative. In the past a three-mile limit had been recognized. Admittedly the consensus of opinion at the present time might be that the limit was now six or twelve miles.

65. Mr. SCELLE observed that, despite Mr. François' argument, States had not refrained, during the period in which the three-mile limit was alleged to have been accepted as a rule of law, from exercising their sovereignty beyond that limit.

66. Mr. FRANÇOIS pointed out that any State which had attempted to extend its territorial sea beyond three miles had met with firm opposition on the part of the international community.

67. Mr. SPIROPOULOS appealed to the special rapporteur to withdraw point 3 from his proposal, since it was not a matter on which the Commission ought to take a decision until it had examined the whole of the report.

68. Mr. FRANÇOIS expressed his willingness provisionally to withdraw point 3 of his proposal.

The meeting rose at 6.10 p.m.

169th MEETING

Tuesday, 22 July 1952, at 9.45 a.m.

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Chairman: Mr. Ricardo J. ALFARO.

Rapporteur: Mr. Jean SPIROPOULOS

Present:

Members: Mr. Gilberto AMADO, Mr. Roberto CÓRDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. H. LAUTERPACHT, Mr. Georges SCELLE, Mr. J. M. YEPES, Mr. J. ZOUREK.

Secretariat: Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

Régime of the territorial sea (item 5 of the agenda) (A/CN.4/53) (*continued*)

1. The CHAIRMAN invited the Commission to continue its consideration of the draft Regulation contained in the special rapporteur's report on the régime of the territorial sea (A/CN.4/53).

ARTICLE 4: BREADTH (*continued*)

2. The CHAIRMAN, speaking as a member of the Commission, said that he wished to explain his reasons for opposing Mr. François' proposal.[1]

3. Point 1 was tantamount to a declaration that there was no rule of international law limiting the territorial sea to three miles. He failed to see any justification for such a sweeping statement. There did not appear to him to be sufficient evidence to support such an assertion. Since the day when a Netherlands jurist established the breadth of the territorial sea at the range of the cannon, which an Italian engineer calculated at three miles, there had been a rule which was respected and applied by most States.

4. Reference had been made to a statement by Gidel that " the idol " of the three-mile rule had fallen at The Hague Conference in 1930;[2] but it must be pointed out that, of the thirty-two governments represented at that Conference, seventeen had voted in favour of the three-mile limit and four in favour of a four-mile limit, while eleven were for a six-mile limit, including the Portuguese representative who was the only one to mention the possibility of a twelve-mile limit.

5. Reference had also been made to apparently contradictory statements by the same author. In his view, Gidel's last word in the matter was that quoted by the special rapporteur in his report:

> "There is no rule of international law concerning the extent of the jurisdiction of the coastal State over its adjacent waters other than the minimum rule whereby every coastal State exercises all the rights inherent in sovereignty over the waters adjacent to its territory to a distance of three miles, and partial jurisdiction beyond that distance in the case of certain specific interests."

In his (Mr. Alfaro's) view, that statement corresponded to the facts. There was a positive rule of international law which recognized a minimum of three miles as the breadth of the territorial sea, and it was the Commission's duty to state it; but it should also state clearly that any claim that a wider belt was the rule today could only be based on unilateral action taken by a certain number of States. The Commission might also

[1] See summary record of the 168th meeting, para. 5.

[2] *Ibid.*, 167th meeting, para. 12.